

## § 112.5

(2) Assistance in indebtedness matters shall not be extended to those creditors:

(i) Who have not made a bona fide effort to collect the debt directly from the military member;

(ii) Whose claims are patently false and misleading; or

(iii) Whose claims are obviously exorbitant;

(3) Some States have enacted laws that prohibit creditors from contacting a debtor's employer about indebtedness or communicating facts on indebtedness to an employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment or obtaining written permission of the debtor.

(i) At Department of Defense installations in States having such laws, the processing of debt complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

(ii) The rule in § 112.4(c)(3)(i) shall govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

(4) Under 15 U.S.C. 1601 note and 1692–1692o (“Fair Debt Collection Practices Act”), contact by a debt collector with third parties, such as commanding officers, for aiding debt collection is prohibited without a court order, or the debtor's prior consent given directly to the debt collector. Creditors are generally exempt from this requirement, but only when they collect on this own behalf.

(d) The following general policies apply to processing of *involuntary allotments* under 5 U.S.C. 5520a(k).

(1) In those cases in which the indebtedness of a military member has been reduced to a judgment, an application for an involuntary allotment from the pay of the member may be made under procedures prescribed by the Under Secretary of Defense (Personnel and

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Readiness). Such procedures shall provide the exclusive remedy available under 5 U.S.C. 5520a(k).

(2) An involuntary allotment from a member's pay shall not be started in any indebtedness case in which:

(i) Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

(ii) There has not been compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. appendix sections 501–591.

### § 112.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) In consultation with the Under Secretary of Defense (Comptroller), establish procedures for the processing of debt complaints and involuntary allotments.

(2) Have policy oversight on the assistance to be provided by military authorities to creditors of military personnel who have debt complaints, and on involuntary allotment of military pay.

(b) The Under Secretary of Defense (Comptroller) shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense (Personnel and Readiness) to administer and process involuntary allotments from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Director, DFAS:

(i) Implements procedures established by the Under Secretary of Defense (Personnel and Readiness) and the Under Secretary of Defense (Comptroller).

(ii) Considers whether the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501–591), has been complied with under 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Department of Defense Executive Agent for Department

of Defense forms necessary to process involuntary allotments.

(c) The Heads of the Department of Defense Components shall urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all Department of Defense personnel. See DoD Directives 1000.10,<sup>3</sup> 1000.11,<sup>4</sup> and 5500.7.<sup>5</sup>

(d) The Secretaries of the Military Departments shall:

(1) Establish, as necessary, procedures to administer and process involuntary allotments from the pay of members of the Military Services. This includes designating those commanders, or other officials who may act in the absence of the commander, who shall be responsible for determining whether a member's absence from a judicial proceeding was caused by exigencies of military duty, and establishing appeal procedures regarding such determinations.

(2) Require commanders to counsel members to pay their just debts, including complying, as appropriate, with court orders and judgments for the payment of alimony or child support.

(3) Emphasize prompt command action to assist with the processing of involuntary allotment applications.

(e) The Chief, Office of Personnel and Training, for the Coast Guard shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense (Personnel and Readiness) to administer and process involuntary allotments from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personnel Center:

(i) Implements procedures established by the Under Secretary of Defense (Personnel and Readiness) and Chief, Office of Personnel and Training,

(ii) Considers whether the Soldiers' and Sailors' Civil Relief Act of 1940, as

amended (50 U.S.C. appendix sections 501-591), has been complied with under 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard Executive Agent for forms necessary to process involuntary allotments.

## PART 113—INDEBTEDNESS PROCEDURES OF MILITARY PERSONNEL

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AUTHORITY: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

SOURCE: 60 FR 1722, Jan. 5, 1995, unless otherwise noted.

### § 113.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under 32 CFR part 112 governing delinquent indebtedness of members of the Military Services.

### § 113.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

<sup>3</sup>See footnote 1 to § 112.4(a)(1).

<sup>4</sup>See footnote 1 to § 112.4(a)(1).

<sup>5</sup>See footnote 1 to § 112.4(a)(1).